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| 10/723,304 | 11/24/2003 | Andrew E. Neubauer | KCX-667 (19384) | 6846 |

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| EXAMINER |
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SUTTON, ANDREW W

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| ART UNIT | PAPER NUMBER |
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3765

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| MAIL DATE | DELIVERY MODE |
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10/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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| Office Action Summary | Application No. 10/723,304 | Applicant(s) NEUBAUER ET AL. | |
| | Examiner Andrew W. Sutton | Art Unit 3765 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3. Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :5/31/05, 3/14/05, 1/5/05, 11/10/2004, 10/13/04, 9/27/04, 5/14/04.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. That applicant states in the preamble of the claims an apparatus for forming an absorbent structure yet in the body of the claims the applicant goes on to further discuss limitations to the absorbent web. It is unclear to the examiner as to what the applicant is trying to claim, an absorbent structure or the apparatus?

As to claim 2, 6, 25, 26, 37 the applicant claims a set of rear and middle openings, but in the drawings the openings 26 and 30 appear to be the same openings.

Claim Rejections - 35 USC § 102

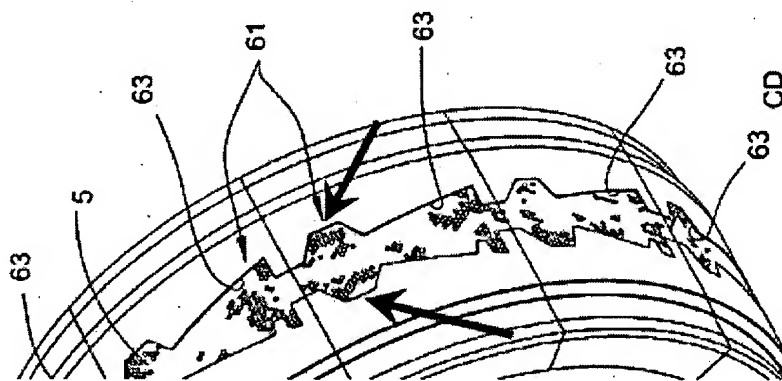
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-7, 15-16, 20-24, 32, 37-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Venturino (US 2003/0132556). Venturino teaches a moving and porous surface 31 with a fiber conveying device 21 for conveying fibers in a gas stream (par 43) with at least one masking member 63 located on the forming surface blocking gas flow through the forming surface with the masking member creating two openings (each side). The limitations to the absorbent structure fail to further limit the apparatus.



As to claim 3 and 38, Venturino illustrates a forming surface including a porous fabric 103.

As to claim 4 and 39, Venturino illustrates the forming surface 7 being a rotating drum.

As to claim 5, 16, 21, and 40 Venturino illustrates the forming drum having a repeating pattern defining multiple absorbent pads connected together.

As to claim 20, Venturino teaches the use of super absorbent particles as well as cellulose (Par. 3).

As to claims 23-24, Venturino teaches the absorbent material being used in a diaper

As to claim 32, Venturino teaches in that synthetic fibers can be used (par. 39).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 19, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Venturino (US 2003/0132556).

As to claim 13, Venturino teaches the apparatus above. Venturino does not teach the masking member being made of metal. The applicant states no criticality or unexpected results to the use of metal. It would have been obvious to one of ordinary skill in the art to use metal as it is merely a design choice.

As to claim 19, With respect to the limitation of a basis weight of 100-2000 gsm, the specification contains no disclosure of either the critical nature of the claimed basis weight or any unexpected results arising therefrom, and that as such the basis weight of 100-2000 gsm was arbitrary and therefore obvious. Such basis weight limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another basis weight or another variable in the claim, the applicant must show that

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the basis weight of 100-2000 gsm is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

As to claims 34-36, With respect to the limitation of a middle portion having a basis weight 25%, 50%, and 100% greater than the bottom portion, the specification contains no disclosure of either the critical nature of the claimed basis weight or any unexpected results arising therefrom, and that as such the middle portion having a basis weight 25%, 50%, and 100% greater than the bottom portion was arbitrary and therefore obvious. Such basis weight limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another basis weight or another variable in the claim, the applicant must show that the middle portion having a basis weight 25%, 50%, and 100% greater than the bottom portion is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Venturino (US 2003/0132556) in view of McFall (US 6,203,654). Venturino teaches the process above. Venturino does not teach the use of adhesive with the absorbent web. McFall teaches the use of adhesive to join the absorbent material 22 to the carrier web (Col. 11 lines 16-23). It would have been obvious to one of ordinary skill in the art to

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combine the web of Venturino with adhesive of McFall to provide the ability to join the web to another layer.

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: The claims indicated with allowable subject matter teach the lateral flaps, when folded having a basis weight in the area of the middle portion that is at least twice the basis weight of the rear portion that is not shown in the prior art.

Claim 8-12, 14, 17-18, 25-31 and 42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form PTO-892.

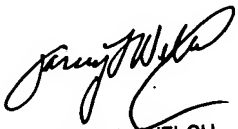
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew W. Sutton whose telephone number is (571) 272-6093. The examiner can normally be reached on Monday - Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS
9/27/07


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